

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ELROY GUZMAN-RESENDEZ	§	
VS.	§	CIVIL ACTION NO. 1:06cv486
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Elroy Guzman-Resendez, an inmate confined within the Bureau of Prisons, proceeding *pro se*, filed the above-styled motion to vacate, correct, or set aside sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this case. The magistrate judge recommends the motion to vacate be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the records, pleadings and all available evidence. Movant filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

The magistrate judge's recommendation was based on his conclusion that as movant had unsuccessfully raised his ground for review on direct appeal, he could not reassert the ground for review in this proceeding. Movant's objections do not address the basis of the magistrate judge's conclusion. As the magistrate judge's conclusion was correct, movant's objections are without merit.

ORDER

Accordingly, movant's objections are **OVERRULED**. The findings of fact and

conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing this motion to vacate.

So **ORDERED** and **SIGNED** this **25** day of **September, 2006**.

A handwritten signature in black ink, appearing to read "Ron Clark", is positioned above a horizontal line.

Ron Clark, United States District Judge